

VIRGINIA FOXX, NC  
Chairman



ROBERT C. "BOBBY" SCOTT,  
VA  
Ranking Member

MAJORITY – (202) 225-4527

MINORITY – (202) 225-3725

COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
2176 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

January 12, 2023

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, D.C. 20202

Dear Secretary Cardona:

The Members of the 118th Congress were recently sworn in and, with this new Congress, we have new leadership in the House of Representatives. As the newly elected Chair of the Committee on Education and the Workforce, it is my responsibility to ensure accountability and transparency from federal agencies under the Committee's jurisdiction. With this letter, I am officially putting you on notice that your agency has an obligation to provide timely and complete responses to inquiries and requests made by the Committee.

During the first two years of the Biden administration, agencies have failed to comply fully with congressional oversight letters. I hope that that will end and we can expect robust responses from you in a timely manner to every letter sent from the Committee or its members. Enclosed is a copy of a letter Committee Republicans sent to which the Department of Education (ED) has not a provided full response:

1. September 28, 2022 –Letter to Secretary Cardona regarding free speech at colleges and universities.

The Committee expects ED to provide timely and complete responses to each letter enclosed. You are instructed to respond in writing by no later than January 27, 2023, with your plans for responding to each letter. Enclosed is a copy of the Committee's instructions to be followed for responses to oversight requests.

The Honorable Xavier Becerra

January 12, 2023

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ED is expected to comply with them as it responds to each of the letters cited in this letter and all others issued by the Committee during the 118th Congress. Failure to do so may result in the Committee taking more robust actions to ensure compliance with its oversight requests.

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx". The signature is written in a cursive, flowing style.

Virginia Foxx  
Chairwoman

Enclosures

# Congress of the United States

Washington, DC 20515

September 28, 2022

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, D.C. 20202

Dear Secretary Cardona:

We are conducting oversight over the U.S. Department of Education's (the Department) administration of taxpayers' dollars awarded to public and private colleges and universities under various federal programs. Specifically, we are concerned many of these colleges and universities are undermining free speech and academic freedom on their campuses. Despite this problem, the Department does not seem to be engaged in promoting the free exchange of ideas within our colleges and universities. In fact, we were troubled to hear that the Department did not extend the free speech hotline first established by the past administration which was intended to be a resource to report potential free speech violations.<sup>1</sup> We also do not know the status of the past administration's Religious Liberty and Free Inquiry Rule.<sup>2</sup> We request a briefing to understand better what actions, if any, the Department is taking to promote free speech and academic freedom on college campuses.

## **Attacks on Academic Speech and Freedom at U.S. Universities**

Institutions of higher learning are places where faculty and students should test, develop, and fine tune theories, thoughts, and ideas—some of which will inevitably be controversial. Unfortunately, colleges and universities are stifling free thought and expression. Among these schools are those which have been perceived as our country's top schools, including Yale Law School,<sup>3</sup> Georgetown University Law Center,<sup>4</sup> University of Washington,<sup>5</sup> University of Pennsylvania,<sup>6</sup> and the University of Southern California.<sup>7</sup> These are just a handful of schools

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<sup>1</sup> Jeremiah Poff, *Department of Education silently shuttered DeVos-era free speech hotline*, WASHINGTON EXAMINER (August 17, 2022).

<sup>2</sup> Jeremy Bauer-Wolf, *Where is the Education Department's proposed religious liberty and free inquiry rule?*, HIGHER ED DIVE (Sept. 7, 2022).

<sup>3</sup> Aaron Sibarium, *Hundreds of Yale Law Students Disrupt Bipartisan Free Speech Event*, WASH. FREE BEACON (Mar. 16, 2022).

<sup>4</sup> David Frum, *Georgetown's Cowardice on Free Speech*, THE ATLANTIC (May 20, 2022).

<sup>5</sup> Haley Chi-Sing, *University of Washington Professor Sues School, Alleging Free Speech Violation*, FOX NEWS (Jul. 13, 2022).

<sup>6</sup> Rachel Frommer, *Law Professors Condemned as Racist after Praising America's 1950s 'Bourgeois Culture'*, WASH. FREE BEACON (Aug. 27, 2017); Karen Sloan, *Penn Law Dean Wants 'Major Sanctions' Against Lightning Rod Professor*, REUTERS (Jul. 18, 2022).

<sup>7</sup> Valerie Richardson, *USC Under Federal Probe for Handling of Alleged Anti-Semitism Against Jewish Student Leader*, WASH. TIMES (Jul. 26, 2022).



that in recent years have either suppressed or threatened to suppress faculty and student free exercise speech.

Often school administrators suppress academic thought because it does not align with ever-changing norms of political correctness.<sup>8</sup> Administrators at Yale Law School threatened to interfere with one student's ability to pass the character and fitness examination for his bar license unless he apologized to a student group for an email.<sup>9</sup> St. Louis University disbursed student fees among student organizations discriminately, based on political or ideological affiliation.<sup>10</sup> Certain faculty at University of Pennsylvania, Georgetown University Law Center, and Princeton University have been placed on administrative leave or faced threats of termination or indefinite "investigations" for expressing their opinions outside the classroom on social media.<sup>11</sup> A further motivation for such administrative actions taken against faculty and students for expressing their thoughts and opinions are pressure campaigns from student groups encouraging censorship.<sup>12</sup> This is no way to run an institution for frank and honest intellectual discourse.

Incidents at public universities such as University of Washington, University of Michigan, and University of Arizona mirror those at private universities. At University of Washington, a computer science professor was disciplined for refusing to include a controversial "indigenous land acknowledgement" statement on his course syllabi.<sup>13</sup> In another case, it took a federal lawsuit for University of Michigan to disband its "bias response team" which was dampening free speech by seeking out and reporting student conduct that was considered "hostile" or "biased" against certain groups.<sup>14</sup> This past spring, disruptive student protesters shut down a speech by constitutional law scholar Ilya Shapiro at University of California, Hastings College of the Law.<sup>15</sup> In fact, student protesters routinely try to disrupt and even shut down campus speakers. U.S. Senator Kyrsten Sinema, an instructor at Arizona State University, was harassed even in the bathroom by protestors who were upset with her voting record.<sup>16</sup> All of these instances exemplify how common it has become to disrupt speech.

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<sup>8</sup> *Id.*

<sup>9</sup> Aaron Sibarum, *A Yale Law Student Sent a Lighthearted Email Inviting Classmates to His 'Trap House.'* *The School is Now Calling Him to Account*, WASH. FREE BEACON (Oct. 13, 2021).

<sup>10</sup> Caitlyn McCoy, *SLU Doles Hundreds of Thousands of Dollars to Liberal Groups, Conservatives Get \$440*, Young Am.'s Found. (Jun. 23, 2022).

<sup>11</sup> Adam Steinbaugh, *Penn Caves to Pressure, Initiates Disciplinary Proceedings Against Tenured Law Professor Amy Wax*, FIRE: FOUND. FOR INDIVIDUAL RIGHTS & EXPRESSION (Jan. 18, 2022); Nate Hochman, *Inside Georgetown Law's Campaign to Cancel Ilya Shapiro: 'This is Melting Down.'* NAT'L REV. (Feb. 2, 2022); Joshua Katz, *Princeton Fed Me to the Cancel Culture Mob*, WALL. ST. J. (May 24, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> *Supra*, n. 3.

<sup>14</sup> Martin Slagter, *University of Michigan Ends Bias Response Team in Free Speech Lawsuit Settlement*, MICHIGAN LIVE (Oct. 29, 2019).

<sup>15</sup> Erwin Chemerinsky & Howard Gillman, *Free Speech Doesn't Mean Hecklers Get to Shut Down Campus Debate*, WASH. POST (Mar. 24, 2022).

<sup>16</sup> Morgan Keith, *Constituents Confront Senator in Arizona State University Bathroom Over Build Back Better Agenda and Immigration*, BUSINESS INSIDER (Oct. 4, 2021).

Unfortunately, these efforts to suppress free speech are working. College students are increasingly concerned about their ability to freely express their opinions and ideas on their campuses.<sup>17</sup> Only 47 percent of students believe their speech rights are protected, and only about half report being comfortable expressing disagreement with their instructor or peers in class.<sup>18</sup> Disturbingly, 66 percent of students reported believing that it is acceptable to shout down a speaker to prevent them from speaking on campus, while 23 percent reported their belief that it is acceptable to use *actual violence* to stop a campus speech.<sup>19</sup>

### **An Example of Threatening Speech Tolerated Because it is Left Leaning Orthodoxy**

However, despite these widespread challenges to freedom of speech, there are strange exceptions which demand our attention. It appears that, if your speech is aligned with left leaning orthodoxy, it will be protected even if it is arguably a threat against the Supreme Court justices. For instance, on June 25, 2022, a Harvard Law School instructor tweeted the following:

The 6 justices who overturned Roe should never know peace again. It is our civic duty to accost them every time they are in public. They are pariahs. Since women don't have their rights, these justices should never have a peaceful moment again.<sup>20</sup>

The tweet was later taken down. However, this same Harvard instructor acknowledge the power of words in a later tweet:

This is such a stupid take [referring to an article by Bari Weiss relating to the attack on Salman Rushdie]. Words are not violence? How was the fatwa not violence? Rushdie had to go into hiding for 8 years because of it. It was just words!

We need to realize that words have the ability to inspire violence and directly harm people. They are not meaningless.<sup>21</sup>

It appears this Harvard instructor needs to heed her own advice and cease tweeting verbal attacks on politicians, commentators, judges, and others who hold conservative views. Instead, this instructor might want to focus on tolerance and respect for all opinions. U.S. universities should follow suit and foster an environment of tolerance, respect, and peaceful dissent.

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<sup>17</sup> Dante Chinni, *Students Value Free Speech, but Feels Theirs is Threatened*, NBC NEWS (Jan. 30, 2022); Jacqueline Pfeffer Merrill, *Is Free Speech At-Risk on Today's College Campuses?* THE HILL (Apr. 15, 2022).

<sup>18</sup> Knight Foundation, *College Student Views on Free Expression and Campus Speech* (Jan. 25, 2022).

<sup>19</sup> *2021 College Free Speech Rankings*, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, available at <https://reports.collegepulse.com/college-free-speech-rankings-2021> (last accessed Aug. 10, 2022).

<sup>20</sup> Alejandra Caraballo (@Esqueer\_), Twitter (Jun. 25, 2022, 7:18 AM), <https://campusreform.org/article?id=19822>.

<sup>21</sup> Alejandra Caraballo, (@Esqueer\_), Twitter (Aug. 15, 2022).

[https://twitter.com/Esqueer\\_/status/1559185185563820032?s=20&t=KzsWGSPLYPdQdglHeTEtoA](https://twitter.com/Esqueer_/status/1559185185563820032?s=20&t=KzsWGSPLYPdQdglHeTEtoA).



**Universities Receive Enormous Amounts of Taxpayer Dollars & Should Support Free Speech—on all Sides of the Political Spectrum**

The federal government gives U.S. public and private institutions substantial grants and contracts funded entirely by taxpayers. For example, in 2019, Yale University received approximately \$620 million, Harvard University received approximately \$1.1 billion, University of Pennsylvania received approximately \$830 million, Georgetown University received approximately \$370 million, and University of Southern California received approximately \$1.1 billion.<sup>22</sup> Public schools also receive substantial federal funding. In 2019, University of Washington received \$1.2 billion, University of Michigan received \$1.1 billion, University of California Hastings College of the Law received \$30 million, and Arizona State University received \$1 billion in federal taxpayer dollars.<sup>23</sup> In total for 2019, federal funds were remitted to public and private postsecondary education institutions in the form of federal student aid (\$98 billion), grants (\$41 billion), and contracts (\$10 billion).<sup>24</sup> Additionally, since 2020, Congress pumped \$76.2 billion in “emergency” funds into the Higher Education Emergency Relief Fund (HEERF) via the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), the *Coronavirus Response and Relief Supplemental Appropriations Act* (CRRSAA), and the *American Rescue Plan Act* (ARPA).<sup>25</sup> These numbers are evidence that American taxpayers make a significant investment in colleges and universities.

For this reason, these institutions of higher learning should be havens of free speech. Instead, school administrators are undermining the very purpose of their institutions. The proliferation of cancel culture in American higher education threatens the ability of students and faculty to push themselves past their academic limits. The Department should be signaling to these institutions that academic freedom is paramount for the success of students, faculty, and society, and should help them see that limiting free speech is counter to the intellectual goals of academia.

To assist Committee Republicans in conducting important oversight of the Department’s administration of funds for higher education, including what the Department is doing to promote free speech and academic freedom, we request a staff-level briefing as soon as possible, but no later than October 5, 2022.

Thank you for your consideration of this important issue. To make arrangements to schedule the briefing or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad

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<sup>22</sup> USASpending.GOV – DATALAB, FED. INV. IN HIGHER EDUC. (Oct. 2019), *see* <https://datalab.usaspending.gov/colleges-and-universities/> (last accessed Aug. 10, 2022).

<sup>23</sup> *Id.*

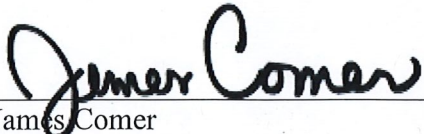
<sup>24</sup> *Id.*

<sup>25</sup> CARES Act, Pub. L. No. 116-136 § 18004(a)(1-3) (2020); CRRSAA, Pub. L. No. 116-250 § 314, 134 Stat. 1932 (2020); ARPA, Pub. L. No. 117-2 § 2003, 135 Stat. 23 (2021); U.S. Dep’t of Educ., ARP: Am. Rescue Plan (HEERF III), *available at* <https://www2.ed.gov/about/offices/list/oep/arp.html> (last accessed Aug. 10, 2022).

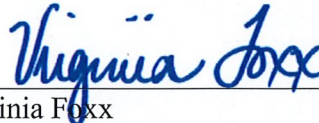
The Honorable Miguel Cardona  
September 28, 2022  
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authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer  
Ranking Member  
Committee on Oversight and Reform



Virginia Foxx  
Ranking Member  
Committee on Education and Labor

cc: The Honorable Carolyn B. Maloney, Chairman  
House Committee on Oversight and Reform

The Honorable Robert C. Scott, Chairman  
Committee on Education and Labor



## **Responding to Committee Document Requests**

1. In complying with this request, you should produce all responsive documents that are in your agency's possession, custody, or control, whether held by you or other past or present employees of the executive branch, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that the agency has a right to copy or to which you have access, or that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee on Education and the Workforce (the "Committee").
2. If any entity, organization, or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., email, CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph, question number, or request number in the Committee's request to which the documents respond.



9. It shall not be a basis for refusal to produce documents that any other person or entity—either inside or outside of the executive branch—also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), the agency's staff should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
12. In the event that a document or portion of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or redaction: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or other agency employees, or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 20, 2021, to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information, not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery. Such submission shall include an explanation as to why the information was not produced originally.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. If physical documents are to be delivered, two sets of documents should be delivered, one set to the Majority Staff in Room 2176 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building during Committee office

hours (9am-5pm, unless other arrangements are made) and signed by members of the respective staffs upon delivery.

19. Upon completion of the document production, the agency's written response should include a written certification, signed by the agency head or his or her designee, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.
20. If the agency does not expect to produce all documents responsive to this letter by the date requested, the agency's staff shall consult with the Committee as soon as it is known the agency cannot meet the deadline, but no later than 24 hours before the due date to explain: (1) what will be provided by the due date, (2) why the agency believes certain materials cannot be produced by the due date, and (3) the agency's proposed timeline for providing any omitted information.
21. The agency's response to questions and request should be answered or provided in separate document and not included inside a narrative response.

### **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or



otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
7. The term "agency" means any department, independent establishment, or corporation of the federal government. For the purposes of responding to oversight requests, the Committee expects information to be provided from all sub-agencies of an agency and not just the information that is immediately available to the addressee or the addressee's immediate sub-agency.